

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **04-O-14456** (04-O-14909;
) 04-O-15387); 05-O-01313;
RONALD EDWARD FAULK,) 05-O-03005; 06-O-11029 (Cons.)
)
Member No. 68325,) **DECISION; ORDER REGARDING**
) **INACTIVE ENROLLMENT; ORDER**
A Member of the State Bar.) **SEALING CERTAIN DOCUMENTS**
)
_____)

INTRODUCTION

In this consolidated original disciplinary proceeding, Respondent Ronald Edward Faulk (Respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As the court has now found that Respondent has successfully completed the ADP, the court will recommend to the Supreme Court that Respondent be suspended from the practice of law in California for five (5) years, that execution of that period of suspension be stayed, and that he be placed on probation for five (5) years subject to certain conditions, including a thirty (30) month period of suspension (with credit given for the period of inactive enrollment under Business and Professions Code section 6233),¹ and he will remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

PERTINENT PROCEDURAL HISTORY

On March 3, 2005, the State Bar of California's Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against Respondent in case nos. 04-O-14456 (04-O-14909; 04-O-15387). The matter was assigned to the Honorable Richard A. Platel.

In July 2005, Respondent requested admittance to the State Bar Court's ADP, and in furtherance of his participation in the ADP, Respondent contacted the State Bar's Lawyer Assistance Program (LAP) on July 15, 2005, to assist him with his substance abuse issues.

The State Bar filed a NDC against Respondent in case no. 05-O-01313 on July 21, 2005. That matter was also assigned to Judge Platel.

On July 22, 2005, Judge Platel filed an order in case no. 04-O-14456, referring the matter to the ADP for evaluation of Respondent's eligibility for participation in the program.

The State Bar filed a NDC against Respondent in case no. 05-O-03005 on July 28, 2005. The matter was also assigned to Judge Platel.

Judge Platel filed an order on August 3, 2005, consolidating case nos. 04-O-14456 (04-O-14909; 04-O-15387) and case no. 05-O-01313.

On September 21, 2005, Judge Platel filed an order consolidating case no. 05-O-03005 with case nos. 04-O-14456 (04-O-14909; 04-O-15387); 05-O-01313.

Respondent entered into a long-term Participation Plan with the LAP on November 9, 2005.

///

///

///

On January 11, 2006, Respondent submitted written statements to the court in case nos. 04-O-14456 (04-O-14909; 04-O-15387), 05-O-01313; 05-O-03005,² which established a nexus between Respondent's substance abuse issues and his misconduct in these matters.

Respondent executed an Amendment to his LAP Participation Plan on February 23, 2006.

The State Bar filed a NDC against Respondent in case no. 06-O-11029 on June 29, 2006. Once again, the matter was also assigned to Judge Platel.

On August 9, 2006, Judge Platel filed an order consolidating case no. 06-O-11029³ with case nos. 04-O-14456 (04-O-14909; 04-O-15387), 05-O-01313; 05-O-03005 (Cons.)

Respondent submitted a statement in November 2006, which established a nexus between Respondent's substance abuse issues and his misconduct in case no. 06-O-11029.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in September 2007. The Stipulation sets forth the factual findings, legal conclusions and aggravating circumstances in this matter.

Following briefing by the parties in November 2007, Judge Platel issued a Confidential Statement of Alternative Dispositions and Orders dated March 6, 2008, formally advising the parties of (1) the discipline which would be recommended to the Supreme Court if Respondent successfully completed the ADP and (2) the discipline which would be recommended if Respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, Respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; Respondent was accepted for participation in the ADP; and Respondent's period of participation in the ADP began on March 6, 2008.

² These statements had originally been submitted on September 19, 2005, and November 18, 2005.

³ Although the order sets forth that case no. 04-O-14456 is consolidated, this appears to be in error, as it appears case no. 06-O-11029 was consolidated with the other matters.

On March 10, 2008, Judge Platel filed an order pursuant to section 6233, enrolling Respondent as an inactive member of the State Bar of California effective August 15, 2008, and until further order of the court. The order set forth that Respondent would remain on inactive enrollment under section 6233 for at least 30 months and until he provides proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. The order also required Respondent, within thirty (30) days after the effective date of his inactive enrollment, to comply with certain requirements set forth in rule 9.20 of the California Rules of Court, as modified by the court, and to file an affidavit showing that he had fully complied with those requirements within 40 days after the effective date of his inactive enrollment.

Respondent filed his rule 9.20 compliance declaration on August 15, 2008.

Respondent thereafter participated successfully in both the LAP and the State Bar Court's ADP. However, on March 3, 2010, the State Bar filed a request for the issuance of an Order to Show Cause (OSC) as to why Respondent should not be unsuccessfully terminated from the ADP. Respondent filed an opposition to the State Bar's request for the issuance of an OSC. Nevertheless, on March 24, 2010, Judge Platel filed an OSC of the court's intent to terminate Respondent from participation in the ADP. In the OSC, Judge Platel noted that on March 17, 2010, the State Bar filed a NDC against Respondent in case no. 09-O-11973. Respondent and the State Bar were ordered to appear for an OSC hearing on April 14, 2010; however, effective April 14, 2010, this consolidated matter was reassigned to the undersigned.

On April 15, 2010, the court filed an order referring case no. 09-O-11973 to the undersigned for possible inclusion in the ADP, and denying without prejudice the State Bar's motion regarding the OSC.

The court filed an order on July 7, 2010, ordering the parties to provide briefs regarding whether the matters alleged admitted in case no. 09-O-11973 should prevent Respondent from being graduated from the ADP. The State Bar and Respondent provided such briefs in August 2010. Thereafter, the court issued an order declining to include case no. 09-O-11973 in the ADP program and returning it to standard proceedings. The court also denied the pending motions by the State Bar to terminate Respondent from the ADP.

On September 30, 2010, after receiving a one-year substance-free certificate from the LAP, indicating that LAP had not detected any use by Respondent of any unauthorized substances for at least one year prior to July 6, 2010, the court filed an order finding that Respondent has successfully completed the ADP. The parties' Stipulation was also filed on September 30, 2010, and this matter was submitted for decision on that date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

In case no. 04-O-14456, Respondent stipulated to: (1) failing to maintain client funds in trust in willful violation of rule 4-100(A) of the Rules of Professional Conduct of the State Bar of California;⁴ (2) dishonestly or with gross negligence misappropriating \$39,140.04 of client settlement funds, an act or acts of moral turpitude, corruption, or dishonesty in willful violation of section 6106; (3) failing to respond to his client's reasonable status inquiries in willful violation of section 6068, subdivision (m); (4) failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of rule 3-700(A)(2); and (5) failing to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

⁴ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

Regarding case no. 04-O-14909, Respondent stipulated that he: (1) failed to maintain client funds in trust in willful violation of rule 4-100(A); (2) dishonestly or with gross negligence misappropriated \$10,962.99 in client settlement funds, an act or acts of moral turpitude, corruption or dishonesty in willful violation of section 6106; (3) failed to respond to his client's reasonable status inquiries in willful violation of section 6068, subdivision (m); (4) failed to inform his client of significant developments in her matters in willful violation of section 6068, subdivision (m); and (5) failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

In case no. 04-O-15387, Respondent stipulated to: (1) recklessly, repeatedly or intentionally failing to perform legal services with competence in willful violation of rule 3-110(A); (2) committing an act or acts involving moral turpitude, dishonesty and/or corruption in willful violation of section 6106 by making misrepresentations to his client; (3) failing to respond to his client's reasonable status inquiries in willful violation of section 6068, subdivision (m); and (4) failing to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

As to case no. 05-O-01313, Respondent stipulated to: (1) failing to maintain client funds in his client trust account in willful violation of rule 4-100(A); (2) committing an act or acts involving dishonesty, moral turpitude and/or corruption in willful violation of section 6106 by misappropriating at least \$93,060.90 in funds belonging to his client and the client's husband; and (3) failing to abide by court orders in willful violation of section 6103.

In case no. 05-O-03005, Respondent stipulation to: (1) failing to maintain client funds in his client trust account in willful violation of rule 4-100(A); (2) committing an act or acts involving dishonesty, moral turpitude and/or corruption in willful violation of section 6106; (3) failing to abide by a court order in willful violation of section 6103; and (4) recklessly,

repeatedly, or intentionally failing to perform legal services with competence in violation of rule 3-110(A).

With respect to case no. 06-O-11029, Respondent stipulated to: (1) recklessly, repeatedly or intentionally failing to perform legal services with competence in willful violation of rule 3-110(A); (2) committing an act or acts of dishonesty, moral turpitude, and/or corruption in willful violation of section 6106 by making a misrepresentation to his client; (3) representing more than one client in a matter in which the interest of the clients potentially conflicted in willful violation of rule 3-310(C)(1); (4) failing to inform his clients of significant developments in a lawsuit in willful violation of section 6068, subdivision (m); and (5) failing, upon termination of employment, to release promptly to a client, at the client's request, all the client's papers and property in willful violation of rule 3-700(D)(1).

In aggravation, Respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁵ Effective September 3, 2002, Respondent was publicly reprovved in case no. 00-O-12963 for violating rule 3-700(D)(1) by failing to promptly return a client file.

In addition, the following were further aggravating circumstances in the present matters: (1) dishonesty, concealment, bad faith, overreaching or other violations of the Rules of Professional Conduct or the State Bar Act were involved in the misconduct (std. 1.2(b)(iii)); (2) trust account funds were involved in four matters (std. 1.2(b)(iii)); (3) clients were harmed by Respondent's misconduct (std. 1.2(b)(iv)); (4) Respondent had done nothing to atone or rectify the consequences of his misconduct (std. 1.2(b)(v)); (5) Respondent did not cooperate with the victims of his misconduct and repeatedly failed to provide the State Bar with information and documentation in the process of resolving these matters (std. 1.2(b)(vi)); and (6) Respondent's

⁵ All further references to standard(s) or std. are to this source.

misconduct evidenced multiple acts of wrongdoing and demonstrates a pattern of misconduct (std. 1.2(b)(ii)).

The parties stipulated that there were no mitigating circumstances; however, it is now appropriate to consider Respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if Respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.2, 2.3, 2.4(b), 2.6 and 2.10 and *In the Matter of Broderick* (Review Dept. 1993) 3 Cal. State Bar Ct. Rptr. 138; *Hawes v. State Bar* (1990) 51 Cal.3d 587; *Baca v. State Bar* (1990) 52 Cal.3d 294; *Hitchcock v. State Bar* (1989) 48 Cal.3d 690; *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495; and *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1.

Because Respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

RECOMMENDED DISCIPLINE

Actual Suspension/Probation

It is hereby recommended that respondent Ronald Edward Faulk, State Bar Number 68325, be suspended from the practice of law in California for five (5) years, that execution of that period of suspension be stayed, and that he be placed on probation⁶ for a period of five (5) years subject to the following conditions:

A. Respondent Ronald Edward Faulk is suspended from the practice of law for a minimum of thirty (30) months (with credit given for inactive enrollment, which was effective August 15, 2008 [Bus. & Prof. Code, § 6233]), and he will remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

B. During the probation period, Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;

C. Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

D. Within thirty (30) days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request;

E. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

⁶ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

F. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions;

G. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of Respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP;

H. Respondent must make restitution, and furnish satisfactory proof thereof to the State Bar's Office of Probation, as follows: (a) to Catherine A. Encinas in the amount of \$38,185.50 plus 10% interest per annum from February 11, 2004 (or to the Client Security Fund to the extent of payment from the fund to Catherine A. Encinas, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and (b) to Olga Rosas in the amount of \$10,962.99 plus 10% interest per annum from December 1, 2000 (or to the Client Security Fund to the extent of payment from the fund to Olga Rosas, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). With each written quarterly report required herein, Respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period. To the extent that Respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, Respondent will be given credit for such payment(s) provided satisfactory proof of such is or has been shown to the Office of Probation.

I. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation (accountant's certificate), certifying that: Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California; that such account is designated as a "Trust Account" or "Clients' Funds Account"; and that Respondent has kept and maintained the following:

1. a written ledger for each client on whose behalf funds are held that sets forth:
 - a. the name of such client;
 - b. the date, amount and source of all funds received on behalf of such client;
 - c. the date, amount, payee and purpose of each disbursement made on

- d. behalf of such client; and
the current balance for such client.
- 2. a written journal for each client trust fund account that sets forth:
 - a. the name of such account;
 - b. the date, amount, and client affected by each debit and credit; and
 - c. the current balance in such account.
- 3. all bank statements and cancelled checks for each client trust account; and
- 4. each monthly reconciliation (balancing) of (1), (2), and (3), above, and if there are any differences between the monthly total balances reflected in (1), (2), and (3), above, the reason for the differences, and that Respondent has maintained a written journal of securities or other properties held for a client that specifies:
 - a. each item of security and property held;
 - b. the person on whose behalf the security or property is held;
 - c. the date of receipt of the security or property;
 - d. the date of distribution of the security or property; and
 - e. the person to whom the security or property was distributed.

If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

J. Unless, within the period of his ADP participation, Respondent provided to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School and passage of the test given at the end of that session, within one (1) year after the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of that session. Arrangements to attend Ethics School Client Trust Accounting School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)⁷

⁷ It is not recommended that Respondent be ordered to take and pass State Bar Ethics School, as Respondent completed Ethics School on August 26, 2010. However, Respondent must still attend Ethics School Client Trust Accounting School, unless he provided to the Office

At the expiration of the period of probation, if Ronald Edward Faulk has complied with all conditions of probation, the five (5) year period of stayed suspension will be satisfied.

Multistate Professional Responsibility Examination

It is further recommended that Ronald Edward Faulk be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Rule 9.20, California Rules of Court

It is not recommended that Respondent be ordered to comply with rule 9.20 of the California Rules of Court. Respondent was ordered to comply with certain requirements set forth in rule 9.20 of the California Rules of Court, as modified by the court, in connection with his inactive enrollment pursuant to section 6233 which was effective August 15, 2008. Respondent filed his rule 9.20 compliance declaration on August 15, 2008. Respondent has remained on inactive enrollment at all times since that date and will presumably remain on inactive enrollment under section 6233 until the effective date of the Supreme Court's order imposing discipline in this matter, at which time Respondent's suspension will go into effect.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

of Probation satisfactory proof that he had fully satisfied this condition within his period of ADP participation.

ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that Respondent's inactive enrollment under section 6233 be terminated on the effective date of the Supreme Court order imposing discipline in this matter without further order of this court.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision; Order Regarding Inactive Enrollment; Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: March _____, 2011

DONALD F. MILES
Judge of the State Bar Court